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No. 02-1415

IN THE
Supreme Court of the United States

GRAND AERIE, FRATERNAL ORDER OF EAGLES,
Petitioner,

v.

TENINO AERIE NO. 564, FRATERNAL ORDER OF EAGLES; KETHLEEN J. CONNER; LANETTE DAVIS; JULIA A. FOSTER; GAYLE L. HARMAN; KAYCEE L. JOHNSON; ANNETTE RILEY; DIANNE E. ROBERTS; JANET TRESENRITER; ALICE F. VASSAR; AND WHIDBEY ISLAND AERIE NO. 3418, FRATERNAL ORDER OF EAGLES,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of the State of Washington

BRIEF *AMICI CURIAE* OF CONFERENCE OF PRIVATE ORGANIZATIONS; GRAND LODGE OF FREE AND ACCEPTED MASONS OF WASHINGTON; AND PRINCE HALL GRAND LODGE OF FREE AND ACCEPTED MASONS, STATE OF WASHINGTON AND JURISDICTION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF *AMICI*

Amici represent some of the largest fraternal organizations in the Nation.

The Conference of Private Organizations ("CONPOR") is a coalition of not-for-profit organizations established to support and defend the rights of religious, fraternal, and sororal groups that promote charitable, educational, and philanthropic activities.[1] Its constituents include the Loyal Order of Moose, the Women of the Moose, the Benevolent and Protective Order of Elks, and the Women's Auxiliary of the Elks – organizations that comprise almost three million members. CONPOR seeks to ensure its members' privacy and associational rights, both locally and nationally, and to promote the utility of such private membership organizations in a global marketplace of ideas. It participated as *amicus* in this case in the Washington Supreme Court and in the Washington Court of Appeals.

The Grand Lodge of Free and Accepted Masons of Washington is the Washington branch of the national fraternal organization commonly known as the Masons. (The Masons does not have a centralized, national office.) The Masonic Fraternity is the oldest fraternity in the world. There are some 1.8 million Masons nationwide, and approximately 21,000 members of the Washington branch. Membership in the Masons also qualifies individuals for membership in other fraternal organizations, such as the Shrine of North American (a.k.a. the Shriners), the Scottish Rite, and the York Rite. Since their inception centuries ago, the Masons always have been an all-male organization.

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[1] Letters of consent have been filed with the Clerk. Pursuant to Rule 37.6, *Amici* state that no counsel for a party authored any part of this brief, and no person or entity, other than *Amicus*, its members, and its counsel made a monetary contribution to the preparation or submission of this brief.

The Prince Hall Grand Lodge of Free and Accepted Masons of the State of Washington and Jurisdiction is a branch of the national fraternal organization of Masons of African American descent. Its membership of approximately 2200 individuals covers Washington and several foreign countries. The Prince Hall Masons were founded in Boston in 1775, and the Washington and Jurisdiction branch was established in 1904. Like the Masons, the Prince Hall Masons is founded upon principles established in the Holy Bible and engages in community service. Its past members include Justice Thurgood Marshall, W.E.B. DuBois, and Booker T. Washington. It always has been an all-male organization.

SUMMARY OF ARGUMENT

1. The Washington Supreme Court's novel application of that State's public accommodations law to force a single-sex social fraternal organization to accept members of the opposite sex stretches this Court's First Amendment precedent beyond its breaking point. Although this Court has held that states may apply public accommodations laws to require *commercial* organizations such as the United States Jaycees and the Rotary Club to accept members whom they do not desire, this Court has never extended that jurisprudence to purely social or benevolent orders. To the contrary, several Justices of this Court have indicated that public accommodations laws may *not* trump private organizations' First Amendment right to expressive association when membership in those organizations does not provide any commercial or economic benefits.

This case places this commercial-noncommercial distinction in stark relief. The Fraternal Order of the Eagles is a social fraternal association that seeks to instill a quasi-religious system of values in its members and has a rich history of charitable service and public advocacy for workers' rights causes. Pet. App. 93-94. In contrast to the Jaycees and the

Rotary Club, membership in the Eagles does not serve any commercial purpose. As the Washington courts acknowledged, it is undisputed that the Eagles "prohibits promotion of business or economic interests by its members." Pet. App. 3. "No outside business may be conducted at [local Eagles] meetings, and [the Eagles] does not offer training or opportunities for its members to develop business skills or contacts." Pet. App. 68.

Allowing a state to force organizations such as the Eagles to accept members against their wishes would destroy the fundamental boundary separating equal economic opportunity from the right to free expression. States have a compelling interest in ensuring that commercial and socioeconomic opportunities are available on a nondiscriminatory basis. But they do *not* have any legitimate interest in meddling with the messages that noncommercial groups, such as fraternal organizations and benevolent orders, convey to their members and to society – no matter how objectionable states may deem those messages to be.

2. This Court should not put off its consideration of this important issue. The permissibility of requiring social fraternal organizations to accept members whom they do not desire affects not only the Eagles, but also the vitality of national organizations such as the Loyal Order of Moose, the Masons, and the Shriners – all of which also are single-sex associations that advance social and benevolent causes but do not offer their members any commercial benefits. It is critical that these organizations maintain consistent membership criteria. The Washington Supreme Court's decision, however, places these organizations under conflicting legal regimes: it prohibits the enforcement of membership policies in Washington that are perfectly lawful in other states.

There is no reason to await further percolation of the First Amendment issue presented. No precise split of authority

will develop on this issue. Courts that have refused to require fraternal and social groups such as the Eagles to accept women as members have not reached the groups' First Amendment defense, ruling instead on statutory grounds that their states' state public accommodations laws do not reach such organizations. Future courts rejecting such lawsuits are sure to do the same. Thus, even if any other court someday reaches the First Amendment issue presented here, it will resolve the issue the same way as the Washington Supreme Court did.

REASONS FOR GRANTING THE WRIT

I. The Washington Supreme Court's Decision Stretches the First Amendment's Tolerance of Public Accommodations Laws Beyond Its Breaking Point.

"Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." *NAACP v. Alabama,* 357 U.S. 449, 460 (1958). This Court, therefore, has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. United States Jaycees,* 468 U.S. 609, 622 (1984). Because it is patent that the composition of expressive organizations affects their abilities to pursue such ends, "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Id.* at 623.

When the terms of a state public accommodations law require an expressive organization to accept members with whom it does not wish to associate, the First Amendment permits the law to be applied only if it is "justified by . . . [a] compelling state interest[], unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Roberts,* 468 U.S. at

623; *accord Boy Scouts of America v. Dale,* 530 U.S. 640, 658 (2000); *Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte,* 481 U.S. 537, 549 (1987). The central issue this case presents is whether a State's general interest in eliminating societal discrimination allows it to force a purely noncommercial and expressive organization to accept members it does not desire. The Washington Supreme Court in this case became the first court ever to allow such a general state interest to trump a social fraternal organization's freedom of association.

A. This Court's Decisions Upholding Applications of Public Accommodations Laws to Expressive Organizations Have Involved Exclusively *Commercial* Organizations.

This Court's decisions consistently have distinguished between the First Amendment rights of commercial and social fraternal organizations to determine their membership criteria. In *Roberts v. United States Jaycees,* this Court allowed Minnesota to compel the Jaycees to accept female members because the club offered to members "various commercial programs and benefits," such as training in business solicitation and management techniques. 468 U.S. at 626 (internal quotation omitted). In doing so, this Court adopted the Minnesota Supreme Court's determination that states have a compelling interest in assuring equal access to "[l]eadership skills . . . , business contacts and employment promotions." *Id.* (quotation omitted). Justice O'Connor, in a concurring opinion, underscored the importance of the commercial aspect of the Jaycees, stating that there is a "dichotomy between rights of commercial association and rights of expressive association." *Id.* at 634. The First Amendment allows a state to require the Jaycees to accept women as members, she wrote, because the Jaycees' membership activities are "commercial [in] nature," *id.* at 639, and the state's goal of "ensuring nondiscriminatory access to commercial opportunities" is "profoundly important." *Id.* at 632.

Both of this Court's decisions following *Roberts* that have allowed states to force expressive organizations to accept unwanted members have done so only after carefully noting that membership in the organizations afforded commercial opportunities. In *Rotary,* the other principal case upon which the Washington Supreme Court relied here, Pet. App. 32, this Court explained that state public accommodations laws serve the "compelling interest in assuring equal access to . . . the acquisition of leadership skills and business contacts as well as tangible goods and services." 481 U.S. at 549. This Court required the Rotary Club to accept women as members because the Club afforded its members "business advantages," and because "business benefits" and "business concerns are a motivating factor in joining local [Rotary] clubs." *Id.* at 543 (internal quotations omitted).

In *New York State Club Ass'n v. City of New York,* 487 U.S. 1 (1988), this Court upheld New York City's law prohibiting certain expressive organizations, but not others, from employing discriminatory membership criteria, in part because the law required only "[p]redominantly commercial organizations" to accept undesired members. *Id.* at 20 (O'Connor, J. concurring). Based on the sensibility of this limitation, this Court rejected an equal protection challenge to the exemption in the law for fraternal organizations and "benevolent orders" and religious organizations.

B. Several Justices of This Court Have Indicated That Public Accommodations Laws May Not Be Applied to Membership Policies of Fraternal Organizations.

In contrast to the Jaycees and the Rotary Club, membership in the Eagles does not serve any commercial or socioeconomic purpose. As the Washington Supreme Court acknowledged, it is undisputed that the Eagles "advances only social and charitable causes and that it prohibits promotion of

business or economic interests by its members." Pet. App. 3. In addition, "no outside business may be conducted at [local Eagles] meetings, and [the Eagles] does not offer training or opportunities for its members to develop business skills or contacts." Pet. App. 68; *see also* Pet. App. 98 (trial court opinion distinguishing Eagles from Rotary Club on this basis). The question here thus becomes whether a state can have a compelling interest in eliminating discrimination in a noncommercial, social organization such as the Eagles.

Everything this Court has written on the subject suggests that the answer is no. Over one hundred years ago, the first Justice Harlan, dissenting in *The Civil Rights Cases*, 109 U.S. 3 (1883), explained that "[n]o government ever has brought, or ever can bring, its people into *social* intercourse against their wishes. Whether one person will permit or maintain *social* relations with another is a matter with which the government has no concern." *Id.* at 59 (emphasis added). So well accepted was this limitation on governmental power that when this Court eventually confronted a case involving a local lodge of the Loyal Order of Moose, which this Court correctly described as "a national fraternal organization," this Court noted that the appellee challenging the lodge's guest service regulations "conced[ed] the right of private clubs to choose members upon a discriminatory basis." *Moose Lodge No. 107 v. Irvis,* 407 U.S. 163, 171 (1972); *see also id.* at 179 (Douglas, J., dissenting) (agreeing that "the First Amendment . . . create[s] a zone of privacy which precludes government from interfering with private clubs or groups" and that "[t]he associational rights which our system honors permit all white, all black, all brown, and all yellow clubs to be formed").

Justice O'Connor elucidated the basis of this right to social association, and distinguished it from "commercial association" in *Roberts*. She explained that "this Court's case law recognizes radically different constitutional protections" for social and commercial associations. 468 U.S. at 638

(O'Connor, J., concurring). "The First Amendment is offended by direct state control of the membership of an organization engaged exclusively in protected expressive activity, but no First Amendment interest stands in the way of" such control over "commercial association." *Id.*

The Court echoed this principle in the *New York State Club* case, upholding New York City's decision to exempt "benevolent orders" and religious organizations from its public accommodations law because such groups "are different in kind" from other groups, "at least in the crucial respect of whether business activity is prevalent among them." 487 U.S. at 18. Although Justice Scalia, like the rest of the Justices, joined the Court's opinion the previous year requiring the Rotary Club to accept women as members, he explained here that groups in which "business activity is [not] prevalent" do "not significantly contribute to the problem" of equal commercial opportunity that public accommodation laws address. *New York,* 487 U.S. at 21 (Scalia, J., concurring).

To be sure, public accommodations laws may – and Washington's does – require noncommercial organizations, when they choose to open their doors to non-members, to do so on an equal opportunity basis. *See* Wash. Rev. Code § 49.60.040(10). When organizations such as the Eagles host public banquets or simply rent their facilities to others, they must make those goods and services available to women and all other groups protected by a public accommodations law. *See Roberts,* 468 U.S. at 636 (O'Connor, J., concurring) (when private organization "enters marketplace of commerce," States may regulate that activity); *Moose Lodge,* 407 U.S. at 180 (Douglas, J. dissenting) (same); *Watson v. Fraternal Order of the Eagles,* 915 F.2d 235, 243-44 (6th Cir. 1990) (requiring Eagles to serve all patrons at a public social event).

But when, as here, an organization demonstrates that it does not cultivate its members' business skills or commercial

opportunities, no decision from this Court or any other court until now has ever construed a public accommodations law to require the group *to accept new members* against its wishes. *See Louisiana Debating & Literary Ass'n v. City of New Orleans,* 42 F.3d 1483, 1494-97 & n.18 (5th Cir. 1995) (government lacks a legitimate interest in controlling membership policies of "purely social" clubs that "prohibit the transaction or discussion of any business on their premises"); *Kiwanis Int'l v. Ridgewood Kiwanis Club,* 806 F.2d 468 (3d Cir. 1986) (New Jersey law does not require Kiwanis to admit women as members); *Benevolent & Protective Order of Elks,* 863 F. Supp. 529, 532-34 & n.2 (W.D. Mich. 1994) (although Michigan public accommodations law requires clubs with "purely social, nonbusiness purpose" to make "facilities" available on equal basis, it does not reach such clubs' "membership" policies); *Solomon v. Miami Woman's Club,* 359 F. Supp. 41 (S.D. Fla. 1973) (federal law does not apply to 32,000-member social club); *Human Rights Comm'n v. Le Club Calumet,* 609 A.2d 285, 287 (Me. 1992) (state law did not reach organization's membership policies because "plaintiffs offered no evidence that club membership is essential to maintenance of social or business opportunities in the . . . community"); *Human Rights Comm'n v. Loyal Order of Moose,* 294 A.2d 594 (Pa. 1972) (although law requires lodge to serve public on an equal basis when it opens its dining room to the public, that law does not affect "activity [that] is related to membership in the organization"). The Washington Supreme Court's decision here is the first opinion to hold otherwise.

C. The Washington Supreme Court's Focus on the Selectivity of Fraternal Organizations' Membership Practices Misapprehends This Court's Expressive Association Precedent.

While acknowledging that the Eagles "support and undertake social causes and projects," not commercial ones, the

Washington Supreme Court nevertheless rejected the Eagles' First Amendment defense on the ground that the organization actively recruits new members and is "not selective in its membership practices." Pet. App. 35.[2] Regardless of whether this characterization of the Eagles' membership practices is accurate, it totally misapprehends this Court's expressive association jurisprudence.

This Court's recent decisions in *Boy Scouts* and *Hurley v. Irish-Amer. Gay, Lesbian & Bisexual Group,* 515 U.S. 557 (1995), make it clear that an organization's First Amendment right to engage in expressive association does not depend in any way on its size or selectivity.

In *Boy Scouts*, despite the fact that the Boy Scouts is a "nonselectiv[e], inclusive rather that exclusive" organization, 530 U.S. at 646, whose "aggressive recruit[ing]" policy has generated over five million members, *Dale v. Boy Scouts of America,* 734 A.2d 1196, 1200-01 (N.J. 1999), this Court held that the Scouts had a First Amendment right to resist accepting gay members. In *Hurley*, this Court likewise held that Massachusetts' public accommodations law violated the First Amendment to the extent that it required a "noncommercial" Irish parade organization, *id.* at 579, to include gay persons in its annual parade. Despite the fact that the parade organizers used a "lack of genuine selectivity in choosing participants and sponsors," *id.* at 562 (quoting lower court), this Court explained that the unwanted persons' inclusion in the parade

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[2] The Washington Supreme Court also stated that "[t]he record reveals facts suggesting that the Eagles' membership practices are selective." Pet App. 36. While this circumstance might have suggested that summary judgment was inappropriate here, the Court nevertheless concluded that "[o]n the entire record before us, we conclude that the conclusions reached by the trial court on the summary judgment motions" – including that "the Eagles was not selective in its membership practices," Pet. App. 35 – "were not in error." Pet. App. 37.

> would at least bear witness to the fact that some Irish are gay, lesbian, or bisexual, and the presence of the marchers would suggest their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals.

Id. at 574. The First Amendment, this Court concluded, entitled the parade organization to decline to send that message. *Id.* at 579.

Despite extensive briefing on this subject,[3] the Washington Supreme Court never explained how its decision here could be reconciled with these precedents. The Eagles is a large, noncommercial organization whose membership policy exalts the virtues of brotherhood – or, as Respondents' *Amici* put it in the Washington Supreme Court, "sends the message that discrimination is still acceptable in society." Br. of Women's Law Project et al. at 7. Either way, the Eagles is unquestionably a noncommercial organization engaged in expressive association. But rather than confronting the special problems attendant to squelching such an organization's expression, the Washington Supreme Court majority and concurrence simply stated that the State's interest in deterring and eliminating discrimination permitted it to require the Eagles to accept women as members. *See* Pet. App. 36-37 & 46.

This overarching statement will not do. This Court in *Hurley* expressly rejected the argument that Massachusetts could require the Irish organization to accept gay members because it would serve "forbid[] acts of discrimination toward

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[3] The Eagles briefed the First Amendment issue, relying heavily on the *Boy Scouts* case, in its opening and supplemental briefs in the Washington Supreme Court. *See* Pt. App. 197-200 (supplemental brief). CONPOR submitted a 20-page *amicus* brief dealing exclusively with the First Amendment issue.

certain classes" and "to produce a society free of the corresponding biases." Such a claim, this Court held, "amounts to nothing less than a proposal to limit speech" of noncommercial groups "in the service of orthodox expression." *Id.* at 578-79.

It is an unavoidable reality that "[a] group's membership policy is itself a means of communicating its values, both internally and externally." Dale Carpenter, *Expressive Association and Anti-Discrimination Law After* Dale*: A Tripartite Approach,* 85 Minn. L. Rev. 1515, 1550 (2001) (describing and defending the commercial vs. noncommercial dichotomy in right-to-associate jurisprudence). Accordingly, the simple lesson of *Hurley* and *Boy Scouts* is that when the presence of an identifiable person or a discrete class of people will communicate a message that is contrary to a *noncommercial* association's beliefs – as the presence of women would regarding an organization with an all-male membership policy – the First Amendment prohibits a state from applying its public accommodations law to compel that group to accept the unwanted person or class of people. This principle applies with full force here and requires reversal of the Washington Supreme Court's decision.

II. The Washington Supreme Court's Decision Threatens the Vitality of Several National Fraternal Organizations.

A. Many National Fraternal Organizations That Have Rich Histories of Public Service and Advocacy Have Always Had Single-Sex Membership Policies.

Fraternal and other social expressive organizations have rich histories in this Nation of fostering social debate and progress. In his famous exposition of the early building blocks of our democracy, Alexis de Tocqueville observed that:

> The right to association [is] almost as inalienable in its nature as the right of personal liberty. . . . In their political associations the Americans, of all conditions, minds, and ages, daily acquire a general taste for association and grow accustomed to the use of it. There they meet together in large numbers, they converse, they listen to one another, and they are mutually stimulated to all sorts of undertakings. They afterwards transfer to civil life the notions they have acquired and make them subservient to a thousand purposes. Thus it is by the enjoyment of a dangerous freedom that the Americans learn the act of rendering the dangers of freedom less formidable.

2 Alexis de Tocqueville, Democracy in America 129, 203 (Bradley ed. 1954).

A recent study by a Harvard sociology professor confirms that social associations remain vital to the health of our democracy and has expresses concern over their decreasing presence in civic life. *See* Robert Putnam, Bowling Alone: The Collapse and Revival of American Community (2000). Professor Putnam explains:

> Social networks are the quintessential resource of movement organizers. Reading groups became sinews of the suffrage movement. Friendship networks, not environmental sympathies, accounted for which Pennsylvanians became involved in a grass-roots protest after the Three Mile Island Nuclear accident. Social ties more than ideals or self-interest explain who was recruited for Freedom Summer, a climactic moment in the civil rights movement. Local church connections account for the solidarity that underlies the Christian Coalition. Precisely because social capital is essential for social

> movements, its erosion could shroud their prospects for the future.

Id. at 152-53 (paperback ed.); *see also* John McGinnis, *Reviving Tocqueville's America: The Rehnquist Court's Jurisprudence of Social Discovery,* 90 Cal. L. Rev. 485, 529 & n.218 (2002) (describing social progress stimulated by social organizations).

Many fraternal and social organizations that have always had single-sex membership policies now have millions of members and a nationwide presence. The Eagles, by uniting men of common beliefs and goals, has successfully lobbied for the workman's compensation laws, mothers' pensions, old age pensions and social security laws. *See People Helping People: The History of the Eagles* (2001) <http://www.foe.com/history/history.html>. When Franklin Roosevelt signed the Social Security Act in 1935, he gave the pen he used to the Eagles and remarked, "May its possession inspire your members to rededicate their efforts and those of the fraternity to the insuring of such economic and political conditions as will bring a greater degree of happiness to our people." Pet. App. 94.

Several other fraternal and social organizations have similar histories of private inculcation of values and public advocacy. The Loyal Order of Moose and the Women of the Moose, separate fraternal organizations of over 1.5 million members dispersed in hundreds of chapters throughout the United States, hold social and recreational gatherings at members-only lodges and advocate for various children's causes, as well as for better treatment of the disabled and those with serious illnesses. *See Moose: The Family Fraternity* <http://www.mooseintl.org>. The Masons support and celebrate the architecture of major public and religious structures through ceremonies whose roots are centuries old. They also engage in charitable activities in support of health-related and

educational causes. *See Our Vision* <http://www.freemason-wa.org>. The Prince Hall Masons engages in similar practices and emphasizes teaching its members the duties they owe to God. *See Mission Statement* <http://www.mwphglwa.org>.[4]

The Washington Supreme Court's decision here threatens the fundamental structure and vitality of each of these fraternal and social organizations. None of these organizations offer their members commercial or socioeconomic benefits, but they all quite properly draw their strength from large numbers of members who are united by common senses of purpose. People join in part because they desire to be part of a social brotherhood or sisterhood. Even if some of these members' and these organizations' other objectives are not specifically gender-oriented, it is inescapable that forcibly altering the nature of the social ties that these organizations offer would affect their abilities to pursue all of their public service or advocacy goals.

B. Immediate Guidance From This Court Is Essential Regarding the Permissibility of Fraternal and Social Organizations' Gender-Based Membership Criteria.

This Court should consider the issue that this case presents now, rather than waiting for any future case that might

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[4] *Amici* by no means represent all of the social and fraternal organizations that may be subject to the decision up for review here. The Shriners, for example, are a national fraternity of approximately 525,000 men who support a network of hospitals that give free medical care to children. They also hold colorful parades and circuses in their communities. *See The Shrine of North America* <http://www.shrinersshq.org/shrine/welcome.html>. The Knights of Columbus, a fraternal organization of over 1.6 million members, supports the Catholic Church as well as various pro-life and charitable causes. *See The Strong Right Arm of the Catholic Church* <http://www.kofc.org/knights/knights.cfm>. Other such organizations abound.

arise. It is vital that large fraternal and social organizations maintain consistent membership policies. Each chapter, lodge, or aerie is a subpart of a larger association and a larger voice, which is necessarily shaped by the association's overall composition. Furthermore, the bylaws of most fraternal organizations grant each member certain visitation rights in other state's chapters. The Washington Supreme Court's decision, however, subjects these large fraternal organizations' policies to different limitations in Washington than in other states, thereby creating the potential for immediate friction and discord if this Court permits this decision to stand.

Finally, there is no reason to await further percolation of the First Amendment issue this case presents. No precise split of authority will develop on this issue. Courts that have refused to require fraternal and social groups such as the Eagles to accept women as members have not reached the First Amendment issue, ruling instead that their states' state public accommodations laws do not reach such organizations. *See supra* at 9-10 (collecting such decisions) & Pet. App. 77 (court of appeals decision below). Future courts rejecting such lawsuits are sure to do the same. Thus, if any future court reaches the First Amendment issue presented here, it will resolve the issue the same way as the Washington Supreme Court did.

The writings of some of this Court's Justices indicate that they already have thought about the expressive associational rights of noncommercial organizations. There is no reason to believe that this Court is not fully capable of resolving this issue right now. It should do so.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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